

Background

- (A) The Supplier has been appointed to the Framework which sets out the terms applicable to Call-Off Contracts entered into by the Buyer and Supplier.
- (B) Unless otherwise specified in a Call-Off Contract, these terms and conditions (“**Supplier Terms**”) shall apply in relation to the Services.

1. Definitions and Interpretation

- 1.1. Terms used in these Supplier Terms shall, unless the context otherwise requires or otherwise defined in the Framework Agreement, have the following meanings:

Additional Services	subject to the Parties agreeing a Change Control Form, the Buyer may subscribe for or purchase (as the case may be) the following non-exhaustive services: (a) additional Products or increased volumes for an existing Product; (b) bespoke configuration of the Products; (c) training in relation to the Products; and/or (d) support in addition to that set out in the Service Level Agreement.
Aggregated Data	Buyer Data that is aggregated (whether by the Supplier, the Subcontractor, the Buyer or a third party on the Buyer’s or the Supplier’s behalf) such that it no longer contains any Personal Data. For the avoidance of doubt, Aggregated Data excludes Buyer Data.
Buyer	the buyer identified in the Order Form.
Buyer Authorised Representative	the individual named in the Order Form.
Commencement Date	the date on which the Supplier begins to provide the Services to the Buyer, as set out in the Order Form.
Deliverables	the results obtained from the Products, including trackers, dashboards, data and reports.
Documentation	all documentation, whether in human-readable or machine-readable form, relating to the Services, or training provided by

the Supplier or the Subcontractor to the Buyer (in each case, which may be amended from time to time by the Supplier or the Subcontractor).

End Users

those employees, agents, contractors and organisations (including, for example, third party service providers) who are authorised by the Buyer to use the Services in accordance with the Call-Off Contract.

Framework Agreement

Means the Crown Commercial Services G-Cloud 15 Framework agreement (RM1577.15).

IG Bridge

an application that runs within the Buyer's private network to:

- (a) pseudonymise and redact Buyer Personal Data; and
- (b) transfer this pseudonymised and redacted Personal Data between the Product(s) and the Buyer's systems.

Intellectual Property Rights or IPR

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, know-how, trade secrets and other rights in Confidential Information, whether registered or not;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction.

Supplier Authorised Representative

the individual named in the Order Form.

Product

the software applications and modules listed in the Order Form to which the Buyer may subscribe, and any Upgrades issued from time to time.

Product Data

all data which has been inputted into the Products by the Supplier, the Subcontractor, the Buyer or the End Users, but excluding the Buyer Data.

Product Implementation	implementation services in relation to the Products, as more particularly described in the Order Form.
Specification	the specifications for the Products, as set out in the Documentation (and which may be amended from time to time by the Supplier or the Subcontractor).
Services	the provision by the Supplier to the Buyer of: (a) a subscription service to the Product(s) subscribed for in the Order Form; (b) the Deliverables and, if applicable, the Buyer Specific Deliverables; (c) Product Implementation, if applicable; (d) the Documentation; (e) the support for such Product(s) in accordance with the Service Level Agreement; (f) the Additional Services (if any); and (g) any other Services specified in the Order Form.
Service Level Agreement	the Supplier's service level agreement for the Products.
Supplier	Xantura Limited, a company registered in England and Wales with company number 06586801 and registered office at 2 Kingston Business Park, Kingston Bagpuize, Abingdon, Oxfordshire, OX13 5FE.
Subcontractor	the party named in the Order Form.
Technical Requirements	the technical requirements that the Buyer must meet to ensure the proper functioning of the Services, as set out in Appendix 1 and updated by the Supplier or the Subcontractor upon notice to the Buyer.
Term	the term set out in the Order Form.
Upgrades	all modifications, upgrades, updates, releases, versions or patches to the Services, as may be issued or written from time to time.
Use Case	the purpose(s) for which the Products may be used, as set out in the Order Form.

2. Services

- 2.1.** The Buyer shall subscribe for the Services by executing the Order Form, and the Supplier shall provide the Services to the Buyer on and subject to the terms of the Call-Off Contract.
- 2.2.** If the Buyer wishes to purchase Additional Services:
- (a) the Parties shall enter into a Variation and, unless otherwise agreed in such Variation, the Additional Services will be subject to the terms of the Call-Off Contract; and
 - (b) Charges will be payable for the Additional Services.

3. Licence

The Supplier grants to the Buyer a non-exclusive, non-transferable, non-sublicensable, revocable licence to permit the End Users to access and use the Products during the Term solely for the Use Case. This licence is subject to the Buyer:

- (a) complying with the terms of the Call-Off Contract; and
- (b) paying the Call-Off Charges in full.

4. Usage Restrictions

- 4.1.** The Buyer shall not (and shall ensure that the End Users shall not):
- (a) use the Services other than in accordance with these Supplier Terms and the Call-Off Contract and any express instructions of the Supplier and/or the Subcontractor;
 - (b) reverse engineer, de-compile or disassemble the Services, except to the extent that is permitted by applicable law;
 - (c) adapt, modify, revise, improve, upgrade, enhance or create derivative works of the Services;
 - (d) access or interfere with any programs or data of the Supplier or the Subcontractor, or any of its or their other Buyers, except for the proper use of the Services in accordance with these Supplier Terms and the Call-Off Contract;
 - (e) operate the Services on behalf of any third party or permit access and use by any person other than an End User; and/or
 - (f) input, upload, transmit or otherwise make available through the Services unlawful, harassing, libellous, obscene, tortious or otherwise objectionable content, or content that infringes or may infringe the Intellectual Property Rights or other rights of any third party.

5. Supplier Warranties

- 5.1.** Subject to Clause 5.4, the Supplier warrants that:
- (a) the Services and Upgrades will substantively perform the functions set out in the applicable Specification;
 - (b) the Services and Upgrades will substantively perform in accordance with the Service Level Agreement; and
 - (c) it has the title or right to license the Services upon the terms and conditions of the Call-Off Contract.

- 5.2.** The warranties at Clause 5.1(a) and (b) shall not apply to the extent of any non-conformance which is caused by:
- (a) use of the Services by the Buyer, End Users or any third party contrary to the Supplier's and/or the Subcontractor's instructions; or
 - (b) use, modification or alteration of the Services by any party other than the Supplier, the Subcontractor or the Supplier's duly authorised contractors or agents.
- 5.3.** If the Services do not conform with the warranty at Clause 5.1, the Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly or provide the Buyer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Buyer's sole and exclusive remedy for any breach of the warranty at Clause 5.1.
- 5.4.** The Supplier makes no representation, warranty or commitment, and shall have no liability or obligation, whatsoever in relation to the content, accuracy or use of any data contained in the Products (including Product Data), whether inputted by the Supplier, the Subcontractor, the Buyer or any third party.
- 5.5.** The Buyer acknowledges and agrees that the Services are provided on an "as is" basis. The Supplier does not warrant or guarantee uninterrupted or fault-free access to the Services or to other services provided via the internet under the Order Form. Although the Supplier will use its reasonable endeavours to keep the Services and such other services available and to correct material errors in the Services, no guarantees, representations or warranties are given about the availability of the Services, such other services or such error correction.
- 5.6.** The Supplier reserves the right to upgrade or amend the Services from time to time. The Buyer shall accept all Upgrades whether or not the same shall be communicated to the Buyer. Upgrades shall not affect the performance of the Services provided in accordance with the Call-Off Contract.

6. Buyer Warranties

- 6.1.** The Buyer warrants that:
- (a) it is the rightful owner of the Buyer Data or that it has (and will continue to have) all the necessary licences, rights, consents and permissions from the rightful owner of the Buyer Data which are required to use, and enable the Supplier and the Subcontractor to use, the Buyer Data; and
 - (b) the Buyer Data does not infringe any third party's Intellectual Property Rights.

7. Buyer Obligations

- 7.1.** The Buyer shall:
- (a) provide the Supplier and the Subcontractor with all necessary co-operation in relation to the Services and all necessary assistance and access to such information as may be required by the Supplier and the Subcontractor in order to provide the Services, including any required Buyer Data, security access information and configuration services;

- (b) ensure it has a suitable internet service provider, and that the hardware, telecommunications lines, and operating or other software necessary to access and use the Services over the internet comply with the technical requirements set out at Clause 8 and the instructions given by the Supplier and the Subcontractor from time to time. The Supplier takes no responsibility for the performance or cost of any such hardware, software, telecommunications lines or internet service provider for the performance or availability of the internet itself, or for any delays, delivery failures or other loss or damages resulting from the transfer of data over the internet or other communications networks;
- (c) maintain and ensure its authentication process for End Users is fully functional;
- (d) ensure that the End Users understand and agree to be bound by the Supplier Terms;
- (e) provide the Supplier and the Subcontractor personnel with ongoing access to user accounts for the Buyer's relevant systems during the Term to enable administration of the Products (and, if reasonably required, for a reasonable period after termination of the Call-Off Contract in connection with the administration of post-termination actions);
- (f) be solely responsible for the Buyer Data, except as otherwise provided in the Call-Off Contract or a data processing agreement between the Buyer, the Supplier and/or the Subcontractor;
- (g) obtain and maintain necessary licences, consents, and permissions necessary for the Buyer or its contractors and agents to perform their obligations under the Call-Off Contract, and comply with any data protection legislation or other law, regulation or order which may be applicable to the access and use of the Services by End Users;
- (h) without affecting its other obligations under the Call-Off Contract, comply with all applicable laws and regulations with respect to its activities under the Call-Off Contract;
- (i) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, or any circumstances which give rise to a risk thereof, promptly notify the Supplier upon becoming aware;
- (j) keep all passwords confidential and follow any security instructions issued by the Supplier or the Subcontractor from time to time;
- (k) use its best endeavours to ensure that it does not import any virus into the Services or the Supplier's or the Subcontractor's computer systems; and
- (l) carry out all Buyer responsibilities in this Clause 7 and otherwise set out in the Call-Off Contract in a timely and efficient manner.

7.2. The Buyer acknowledges that the delivery of the Services is dependent upon the Buyer complying with its obligations in this Clause 7. If the Buyer fails to carry out any of these obligations such that the delivery of the Services is:

- (a) delayed, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary
- (b) adversely affected, the Supplier will be entitled (at its option) to suspend or delay all or part of the Services until the issue adversely impacting delivery of the Services is rectified.

- 7.3. The Buyer shall be responsible for any breach of the Call-Off Contract by an End User or any third party under its control who, by reason of its negligence, gains access to the Services.

8. Technical Requirements

- 8.1. Unless otherwise agreed, the Buyer must install the IG Bridge and host it on a Buyer server. The server must meet the hardware and firewall requirements in the Documentation.
- 8.2. The Buyer must integrate and maintain an authenticator tool (either its own or one provided by a third party) to manage End Users' access to the Products. If the Buyer wishes to add End Users from other organisations (for example, external service providers), the Buyer must ensure that those End Users can authenticate either via the Buyer's authenticator or such other organisation's authenticator.
- 8.3. The Buyer must provide details of, and access to, the Buyer's authentication provider and all authentication providers relating to any End Users from other organisations, in order that the Supplier and/or the Subcontractor can arrange and maintain technical integration of the Products with such authentication providers.
- 8.4. The Buyer shall give the Supplier at least 60 days' notice in writing if it intends to change any such authentication providers (including details of the new suppliers) so that the Supplier can consider, investigate and implement any required changes to the Services. The Supplier shall be entitled to charge the Buyer on a time and materials basis for any work required to integrate the Services with any updated authentication supplier/system.

9. Account Management

- 9.1. The Buyer's Authorised Representative and the Supplier's Authorised Representative shall meet every 6 months from the Commencement Date (or as otherwise agreed) to discuss the performance of the Services.

10. Intellectual Property Rights

- 10.1. Save as set out in the Call-Off Contract, nothing in the Call-Off Contract will transfer any rights, title or interest in any existing Intellectual Property Rights owned by or licensed to one Party to the other Party. This includes any Intellectual Property Rights created prior to, developed independently of, or unconnected with, the Call-Off Contract.
- 10.2. In addition to the licence granted at Clause 3, any Intellectual Property Rights that are owned by or licensed to one Party which are in existence as at the Commencement Date or have been developed prior to, independently of, or unconnected with, the Services ("**Background IPR**") shall remain in the ownership of that Party. The Supplier will grant to the Buyer a non-exclusive, non-transferable, non-sublicensable, revocable licence to use the Supplier's Background IPR solely to the extent that is necessary for the Buyer to use the Services in accordance with the Use Case.
- 10.3. If the Supplier requires any of the Buyer's Background IPR to provide the Services, the Buyer will grant to the Supplier a non-exclusive, transferable, sub-licensable, irrevocable, royalty-free, perpetual licence to use such Background IPR.
- 10.4. To the extent that any Intellectual Property Rights are developed by the Parties or their agents or subcontractors as a result of, in relation to, or connected with the Call-Off Contract, including the

Deliverables and Buyer Specific Deliverables (“**Foreground IPR**”) it shall vest in the Supplier, but the Supplier will grant to the **Buyer** a non-exclusive, non-transferable, non-sublicensable, revocable licence to use such Foreground IPR (but excluding, for the avoidance of doubt, any modifications or improvements to the Products themselves) solely to the extent that is necessary for the Buyer to use the Services.

10.5. The Buyer grants the Supplier a fully paid-up, non-exclusive, royalty-free, transferable, sub-licensable licence to use:

- (a) Buyer Data for the purpose of providing the Services to the Buyer; and
- (b) Aggregated Data for the Supplier’s own business purposes, provided that the Supplier shall not, without the Buyer’s prior written consent, use Aggregated Data in such a way that it links to an individual.

11. Indemnities

11.1. The Buyer shall defend, indemnify and hold harmless the Supplier against any:

- (a) third party claims, actions or proceedings arising out of or in connection with the Buyer’s use of the Services;
- (b) losses resulting from the Buyer’s use of the Services other than resulting from the Supplier’s breach; and
- (c) any claim that the Buyer Data or Buyer Background IPR infringes any third party’s Intellectual Property Rights.

11.2. Subject to Clauses 11.1, 11.3 and 11.4, the Supplier shall defend the Buyer, its officers, directors and employees against any claim that the Buyer’s use of the Services in accordance with the Call-Off Contract infringes any Intellectual Property Rights subsisting in the territory of such third party (“**IP Claim**”), and the Supplier will indemnify the Buyer for any amounts awarded against the Buyer in judgment or settlement of such IP Claim.

11.3. In the event of an IP Claim, the Supplier may, at its option:

- (a) obtain the rights without infringing such third party’s Intellectual Property Rights;
- (b) modify the Services so that they do not infringe such third party’s Intellectual Property Rights without adversely affecting their functionality or performance; or
- (c) terminate the Call-Off Contract.

11.4. The indemnity in Clause 11.2 is subject always to:

- (a) the Buyer promptly informing the Supplier of an IP Claim;
- (b) the Buyer using all reasonable endeavours to mitigate any loss or damage;
- (c) the Buyer refraining from making any statement or admission of liability; and
- (d) the Supplier having the right to defend and settle the IP Claim at its own expense.

11.5. In no event shall the Supplier or its employees, agents and sub-contractors be liable to the Buyer to the extent that an IP Claim is based on:

- (a) a modification of the Services by anyone other than the Supplier or the Subcontractor;
- (b) the Buyer's use of the Services in a manner contrary to the Call-Off Contract or any instructions given to the Buyer by the Supplier or the Subcontractor; or
- (c) the Buyer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

11.6. The foregoing and Clause 12 state the Buyer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any third party's Intellectual Property Rights.

11.7. Clause 12 sets out the Supplier's total aggregate liability in respect of any IP Claim.

12. Liability

12.1. Except as expressly and specifically provided in the Call-Off Contract:

- (a) the Buyer assumes sole responsibility for results obtained from its use of the Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information or instructions provided to the Supplier by the Buyer in connection with the Services or any actions taken by the Supplier at the Buyer's direction; and
- (b) to the maximum extent permitted by applicable law, all conditions, warranties, terms and undertakings implied by law or otherwise in respect of the subject matter of the Call-Off Contract are excluded.

13. Archiving

13.1. The Supplier and/or the Subcontractor shall follow its or their archiving procedures as may be notified to the Buyer for any Buyer Data which has been inputted into the Products, and such document may be amended by the Supplier or the Subcontractor in its or their sole discretion. In the event of any loss or damage to any Buyer Data contained within the Products, the Buyer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore such lost or damaged Buyer Data from the latest back-up of Buyer Data maintained by the Supplier or the Subcontractor in accordance with its or their archiving procedure.

13.2. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of any Buyer Data contained within the Products that is caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Buyer Data maintenance and back-up, for which it shall remain fully liable).

14. Suspension and Termination

14.1. The Supplier may, without prejudice to its other rights and remedies, suspend the Services and the licences granted under the Call-Off Contract if the Buyer is in breach of the Call-Off Contract, and such suspension will be lifted upon the Buyer remedying its breach of the Call-Off Contract.

14.2. On termination of the Call-Off Contract for any reason:

- (a) the Buyer shall pay the Supplier for the Services up to the date of termination;

- (b) all rights and licences granted under the Call-Off Contract shall terminate immediately, and the Buyer shall cease to use the Services;
- (c) each Party shall return and make no further use of any equipment, property, Documentation, Deliverables or other items (and all copies of them) belonging to the other Party;
- (d) each Party shall return or destroy all copies of Confidential Information received from the other Party, unless a Party is compelled to keep such information by law or any applicable governmental or regulatory authority;
- (e) the Supplier or the Subcontractor may destroy or otherwise dispose of any of the Buyer Data in its or their possession unless the Supplier or the Subcontractor receive, no later than 10 business days after the date of the termination, a written request for the delivery to the Buyer of the then most recent back-up of the Buyer Data. The Supplier or the Subcontractor shall use reasonable commercial endeavours to deliver the back-up to the Buyer within 30 days of its receipt of such a written request, provided that the Buyer has at that time paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Buyer shall pay all reasonable expenses incurred by the Supplier or the Subcontractor in returning or disposing of Buyer Data; and
- (f) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Call-Off Contract which existed at or before the date of termination, shall not be affected or prejudiced.

15. Force Majeure

- 15.1.** If total or partial performance of the Services by the Supplier is prevented or materially delayed by virtue of any reason whatsoever beyond its reasonable control (“**Force Majeure Event**”), the Supplier is excused from performing its obligations under the Call-Off Contract while the inability to perform continues, if it:
 - (a) provides written notice to the Buyer; and
 - (b) uses all reasonable measures to reduce the impact of the Force Majeure Event.
- 15.2.** The Buyer can partially or fully terminate the Call-Off Contract with immediate effect if the provision of the Services is materially affected by a Force Majeure Event which lasts for 90 days continuously.

16. Data Protection

- 16.1.** The Parties shall ensure that, separately to the Call-Off Contract, appropriate data protection terms are in place in relation to the Services.
- 16.2.** The Buyer shall ensure information governance approval in relation to the Services (including completion of a data protection impact assessment and/or data processing agreement, if required) is obtained in a timely manner.
- 16.3.** The Supplier may suspend the licences granted under the Call-Off Contract until such time as it is satisfied that the Parties are complying with Clause 16.1.

- 16.4.** The Buyer acknowledges that the Supplier may transform Personal Data contained within Buyer Data to Aggregated Data, and all Aggregated Data shall no longer be recognised as Buyer Data to the extent it cannot reasonably be de-aggregated. For example, and by way of illustration only, Aggregated Data may be the effectiveness of a specific service, which would be calculated in order to benchmark against other local authorities' services.